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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON - TACOMA

10 DARRELYN COX,

11 Plaintiff,

12 vs.

13 FRANCISCAN HEALTH SYSTEM, a
14 Washington corporation, d/b/a/ ST. JOSEPH
MEDICAL CENTER,

15 Defendants.

CASE NO.

ANSWER

16 COMES NOW Defendant Franciscan Health System d/b/a St. Joseph Medical Center
17 (“Defendant,” “FHS,” or the “Hospital”) by and through its attorneys of record, and for its
18 Answer to Plaintiff’s Complaint, states as follows:

19 **I. PARTIES**

20 1.1 Defendant admits that Plaintiff previously worked as a Patient Placement
21 Registered Nurse, a job which involved intake of transfer requests and locating the most
22 appropriate bed within FHS’s multiple hospitals. Defendant further admits that the conduct
23 complained of in this lawsuit is not related to any religious purpose, practice, or activity of
24 FHS. Plaintiff is without sufficient information to admit or deny the allegations regarding
25 Plaintiff’s current county of residency and, therefore, denies those allegations. Defendant
26 denies any remaining allegations contained in Paragraph 1.1 of Plaintiff’s Complaint.

1 1.2 Defendant admits that Defendant is a Washington not-for-profit corporation,
2 which transacts business in Pierce County, Washington. Except as expressly admitted herein,
3 Defendant denies the allegations of Paragraph 1.2 of Plaintiff's Complaint.

4 **II. JURISDICTION AND VENUE**

5 2.1 Defendant admits that Plaintiff's Complaint purports to allege claims pursuant
6 to which jurisdiction and venue would be proper in this Court. Defendant specifically denies,
7 however, that any cause of action exists. Defendant denies any remaining allegations
8 contained in Paragraph 2.1 of Plaintiff's Complaint.

9 **III. FACTS**

10 3.1 Defendant admits the allegations contained in Paragraph 3.1 of Plaintiff's
11 Complaint.

12 3.2 Defendant admits that Plaintiff previously worked at FHS between
13 approximately August 31, 2007 and December 2, 2009. Defendant further admits that
14 Plaintiff returned to work at FHS on or about January 2, 2013, when she was hired as a Care
15 Manager. Defendant denies any remaining allegations contained in Paragraph 3.2 of
16 Plaintiff's Complaint.

17 3.3 Defendant is without sufficient information to admit or deny the allegations
18 regarding when Plaintiff suffered an off-the-job injury and regarding the specific nature of
19 that injury. Defendant admits that Plaintiff had been scheduled to be absent from work on a
20 pre-approved vacation which was scheduled through September 30, 2013. Defendant denies
21 any remaining allegations contained in Paragraph 3.3 of Plaintiff's Complaint.

22 3.4 Defendant is without sufficient information to admit or deny the allegations
23 regarding whether Plaintiff was evaluated by her medical provider and, therefore, denies those
24 allegations. Defendant admits that Plaintiff initially provided a doctor's note dated September
25 30, 2013, which indicated that Plaintiff could return to work with a reduced schedule of six
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1 hours per day with an option to work a full 12 hour shift if symptoms allowed. Defendant
2 denies any remaining allegations contained in Paragraph 3.4 of Plaintiff's Complaint.

3 3.5 Defendant admits that Plaintiff's supervisor informed Plaintiff that her reduced
4 work schedule would be accommodated for a period of time, and inquired how long the
5 accommodation would be needed. Defendant denies the remaining allegations contained in
6 Paragraph 3.5 of Plaintiff's Complaint.

7 3.6 Defendant admits that Plaintiff returned to work on October 1, 2013, working
8 each day the number of hours which Plaintiff felt comfortable working. Defendant denies the
9 remaining allegations contained in Paragraph 3.6 of Plaintiff's Complaint.

10 3.7 Defendant admits the allegations contained in Paragraph 3.7 of Plaintiff's
11 Complaint.

12 3.8 Defendant denies the allegations contained in Paragraph 3.8 of Plaintiff's
13 Complaint.

14 3.9 Defendant is without sufficient information to admit or deny the allegations
15 regarding Plaintiff's return to her medical provider and, therefore, denies those allegations.
16 Defendant admits, however, that on October 11, 2013, Plaintiff provided another note from
17 her doctor indicating that she should remain off work until November 11, 2013, dependent
18 upon continued improvement. Defendant denies any remaining allegations contained in
19 Paragraph 3.9 of Plaintiff's Complaint.

20 3.10 Defendant admits the allegations contained in Paragraph 3.10 of Plaintiff's
21 Complaint.

22 3.11 Defendant is without sufficient information to admit or deny the allegations
23 regarding Plaintiff's return to her medical provider and any conversations which the two may
24 have had and, therefore, denies those allegations. Defendant admits the remaining allegations
25 contained in ¶3.11 of Plaintiff's Complaint.
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1 3.12 Defendant is without sufficient information to admit or deny the allegations
2 regarding Plaintiff's return to her medical provider and, therefore, denies those allegations.
3 Defendant admits, however, that on or about November 5, 2013, FHS received a doctor's note
4 indicating that Plaintiff would be able to return to full regular duty on January 13, 2014,
5 dependent upon continued improvement. Defendant denies any remaining allegations
6 contained in Paragraph 3.12 of Plaintiff's Complaint.

7 3.13 Defendant admits that on or about December 5, 2013, Plaintiff's supervisor
8 sent a letter to Plaintiff indicating that it had been determined that Plaintiff was not FMLA
9 eligible and that Plaintiff should notify the supervisor no later than December 16, 2013,
10 whether she could return to work with or without accommodation in the immediate future.
11 The letter also indicated that Plaintiff would remain in an inactive status through April 11,
12 2014, so that she could seek other employment options if she were unable to return to her
13 former position with or without accommodation. Defendant denies any remaining allegations
14 contained in paragraph 3.13 of Plaintiff's Complaint.

15 3.14 Defendant denies the allegations contained in Paragraph 3.14 of Plaintiff's
16 Complaint, and affirmatively states that the Hospital Human Resources Director, Jill Karon-
17 Ross, invited Plaintiff to meet in order to identify appropriate positions within one of FHS's
18 various locations, but Plaintiff never responded to Ms. Karon-Ross.

19 3.15 Defendant is without sufficient information to admit or deny the allegations
20 regarding Plaintiff's return to her medical provider and, therefore, denies those allegations.
21 Defendant admits that on or about December 20, 2013, Plaintiff presented a doctor's note
22 indicating that she could return to work on December 30, 2013, with restrictions, including no
23 prolonged keyboarding, repetitive lifting, pushing or pulling, and a lifting restriction of less
24 than 10 pounds. The restrictions also indicated that Plaintiff could walk and move without
25 restriction and should work 4 hours per day slowly increasing the number of hours worked as
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1 tolerated. Defendant denies any remaining allegations contained in Paragraph 3.15 of
2 Plaintiff's Complaint.

3 3.16 Defendant admits that Plaintiff's supervisor contacted Plaintiff to discuss
4 Plaintiff's return to work. Defendant denies the remaining allegations contained in Paragraph
5 3.16 of Plaintiff's Complaint.

6 3.17 Defendant denies the allegations contained in Paragraph 3.17 of Plaintiff's
7 Complaint.

8 3.18 Defendant admits that in February 2014 Plaintiff contacted FHS's human
9 resources office contending that her situation had been mishandled. Defendant denies any
10 remaining allegations contained in Paragraph 3.18 of Plaintiff's Complaint.

11 3.19 Defendant admits the allegations contained in Paragraph 3.19 of Plaintiff's
12 Complaint.

13 3.20 Defendant admits that on or about November 26, 2014, the EEOC issued a
14 right to sue notice to Plaintiff. Defendant is without sufficient information to admit or deny
15 the remaining allegations contained in Paragraph 3.20 of Plaintiff's Complaint and, therefore,
16 denies those allegations.

17 3.21 Defendant admits that Plaintiff was FMLA eligible at the time she requested
18 leave and that an inadvertent error by Defendant's third party administrator of the FMLA
19 program improperly informed her otherwise.

20 3.22 Defendant denies the allegations contained in Paragraph 3.22 of Plaintiff's
21 Complaint.

22 **IV. FIRST CAUSE OF ACTION**
23 **VIOLATION OF THE FAMILY MEDICAL LEAVE ACT**

24 4.1 Defendant admits the allegations contained in Paragraph 4.1 of Plaintiff's
25 Complaint.
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1 4.2 Defendant admits the allegations contained in Paragraph 4.2 of Plaintiff's
2 Complaint.

3 4.3 Defendant admits that Plaintiff was entitled to medical leave at the time leave
4 was requested and affirmatively states that Plaintiff did receive such leave. Defendant denies
5 that Plaintiff was "disabled" and denies any remaining allegations contained in Paragraph 4.3
6 of Plaintiff's Complaint.

7 4.4 Defendant denies the allegations contained in Paragraph 4.4 of Plaintiff's
8 Complaint.

9 4.5 Defendant denies the allegations contained in Paragraph 4.5 of Plaintiff's
10 Complaint.

11 **V. SECOND CAUSE OF ACTION**
12 **VIOLATION OF THE WASHINGTON FAMILY LEAVE ACT**

13 5.1 Defendant admits the allegations contained in Paragraph 5.1 of Plaintiff's
14 Complaint.

15 5.2 Defendant admits the allegations contained in Paragraph 5.2 of Plaintiff's
16 Complaint.

17 5.3 Defendant admits that Plaintiff was entitled to leave at the time leave was
18 requested and affirmatively states that Plaintiff did receive such leave. Defendant denies that
19 Plaintiff was "disabled" and denies any remaining allegations contained in Paragraph 5.3 of
20 Plaintiff's Complaint.
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22 5.4 Defendant denies the allegations contained in Paragraph 5.4 of Plaintiff's
23 Complaint.

24 5.5 Defendant denies the allegations contained in Paragraph 5.5 of Plaintiff's
25 Complaint.
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1 **VI. THIRD CAUSE OF ACTION**
2 **VIOLATION OF WASHINGTON’S LAW AGAINST DISCRIMINATION**

3 6.1 Defendant denies the allegations contained in Paragraph 6.1 of Plaintiff’s
4 Complaint.

5 6.2 Defendant denies the allegations contained in Paragraph 6.2 of Plaintiff’s
6 Complaint.

7 **VII. FOURTH CAUSE OF ACTION**
8 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

9 7.1 Defendant denies the allegations contained in Paragraph 7.1 of Plaintiff’s
10 Complaint.

11 7.2 Defendant denies the allegations contained in Paragraph 7.2 of Plaintiff’s
12 Complaint.

13 **VIII. AFFIRMATIVE DEFENSES**

14 By way of further answer and affirmative defense, Defendant states and alleges as
15 follows:

16 8.1. Each and every count contained in Plaintiff’s Complaint fails to state a claim
17 upon which relief may be granted.

18 8.2. Plaintiff’s claims are barred because any and all actions taken by Defendant
19 relating to Plaintiff’s employment were taken for lawful, nondiscriminatory and/or other
20 legitimate business reasons, unrelated to any alleged disability, any leave taken, any protected
21 activity, or any other prohibited consideration.

22 8.3. If Plaintiff sustained damage, which is specifically denied, such injuries were
23 caused by others and not caused by Defendant.

24 8.4. Plaintiff has failed to mitigate her damages, if any.

25 8.5. Plaintiff’s claims are barred by the doctrines of waiver, laches, res judicata,
26 and/or estoppel.

1 8.6. Defendant's actions were required by business necessity and were based on
2 factors other than Plaintiff's alleged disability.

3 8.7. Any alleged disability possessed by the Plaintiff cannot be reasonably
4 accommodated by Defendant.

5 8.8. Any accommodation needed by the Plaintiff would constitute an undue
6 hardship.

7 8.9. Plaintiff's claims are barred because Defendant's remedial measures were
8 adequate to respond to any actually or constructively known harassment or discrimination.
9

10 8.10. To the extent Plaintiff's claims are based in whole or in part upon a "mixed
11 motive" claim and the finder of fact determines, based upon legally sufficient evidence, that
12 any alleged disability was a motivating factor in any employment decision at issue (which
13 Defendant absolutely denies), Defendant is entitled to judgment, in whole or in part, because
14 the same employment decisions would have been made irrespective of whether Plaintiff's
15 alleged disability was considered.

16 8.11. Plaintiff's claims for punitive damages are barred by the *Kolstad* affirmative
17 defense because Defendant made good faith efforts to prevent discrimination and to comply
18 with all applicable laws.

19 8.12. Defendant reserves the right to further respond and to assert any additional
20 affirmative defenses as they become evident through discovery or investigation, including the
21 defense of after-acquired evidence.
22

23 **IX. PRAYER FOR RELIEF**

24 WHEREFORE, having fully answered plaintiff's Complaint, Defendant requests entry
25 of judgment dismissing the same with prejudice and directing that Plaintiff take nothing,
26 awarding its costs, together with such other and further relief as may be appropriate.

1 DATED this 27th day of January, 2015.

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3 BENNETT BIGELOW & LEEDOM, P.S.

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5 By /s/Michael F. Madden
6 Michael Madden, WSBA #8747
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 27th day of January, 2015, the foregoing document was electronically filed through the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of Court will send email notification of such filing to the following persons:

Dwayne L. Christopher, WSBA #28892	<input type="checkbox"/>	Hand Delivered
Dwayne L. Christopher, PLLC	<input checked="" type="checkbox"/>	CM/ECF
4008 S. Pine Street	<input type="checkbox"/>	U.S. Mail
Tacoma, WA 98409	<input type="checkbox"/>	Email

James W. Beck, WSBA #34208	<input type="checkbox"/>	Hand Delivered
Daniel L. Richards, WSBA #47944	<input checked="" type="checkbox"/>	CM/ECF
Gordon Thomas Honeywell LLP	<input type="checkbox"/>	U.S. Mail
1201 Pacific Avenue, Suite 2100	<input type="checkbox"/>	Email
Tacoma, WA 98402		

Attorneys for Plaintiffs

Dated this 27th day of January, 2015, at Seattle, Washington.

By /s/Michael F. Madden
Michael Madden, WSBA #8747

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